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IN THE

Supreme Court of the United States

October Term, 1952

No. 497

SEATRAIN LINES, INC.,

Petitioner,

vs.

PENNSYLVANIA RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, BALTIMORE AND OHIO RAILROAD COMPANY, SEABOARD AIR LINE RAILROAD COMPANY, ERIE RAILROAD COMPANY, ASSOCIATION OF AMERICAN RAILROADS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, BEFORE THE RENDITION OF JUDGMENT IN THE COURT OF APPEALS

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Dated: December 10, 1952.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, BEFORE THE RENDITION OF JUDGMENT IN THE COURT OF APPEALS

Seatrain Lines, Inc. respectfully prays that a writ of certiorari be issued to review judgments of the District Court of the United States for the District of New Jersey, before the rendition of judgment by the Court of Appeals.

Opinion Below

The opinion of the District Court (R. pp. 593-622, 624-625) has not yet been reported.*

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* Since the filing of this petition, the opinion of the District Court has been reported: *Seatrain Lines, Inc.* v. *Pennsylvania R. Co., et al.*, 108 F. Supp. 113.

Jurisdiction

The judgment of the District Court was entered against all respondents other than respondent Louisville & Nashville Railroad Company on November 12, 1952, and against said respondent on November 21, 1952 (R. pp. 623, 625-626), dismissing a complaint (R. pp. 1-45) which sought injunction and damages for a conspiracy in violation of the antitrust laws and denying petitioner's motion for a preliminary injunction (R. pp. 57-61), on the ground that the Interstate Commerce Commission had exclusive jurisdiction of the subject matter. Separate judgments of dismissal, without prejudice, were entered as against four other railroads originally named as defendants, on February 1, 1952, November 21, 1952, December 3, 1952 and December 8, 1952 respectively (R. pp. 45, 632-633); and the action was dismissed without prejudice against six traffic associations originally named as defendants, on April 26, 1952 (R. pp. 632-633). Appeal was docketed in the Court of Appeals for the Third Circuit on November 25, 1952 (Ct. App. Docket Entry under date Nov. 25, 1952). The jurisdiction of this Court is invoked under Section 1254 of the Judicial Code, as amended (28 U. S. C. Sec. 1254).

Questions Presented

The broad question involved in this case is whether the District Court erred in holding that it lacked jurisdiction of the subject matter of the complaint herein which alleges a combination and conspiracy to monopolize and

restrain interstate trade and commerce in the transportation of freight. The Court's holding that it lacked jurisdiction was based solely upon its holding that the Interstate Commerce Commission had exclusive subject-matter jurisdiction as to all of the various means alleged to have been employed in carrying out the conspiracy. The particular questions presented thus concern the Interstate Commerce Commission's jurisdiction over such means, specifically two of them. The questions are:

1. Whether the District Court erred in holding that the Interstate Commerce Commission has jurisdiction to require a railroad to permit the interchange and use of its cars in the transportation of freight in interstate commerce by a water carrier when such railroad does not participate in and maintain through routes with such water carrier, it appearing that the Interstate Commerce Commission had already decided in proceedings between the same parties that its jurisdiction to require such interchange and use was limited to cars of railroads participating in and maintaining through routes with such water carrier.

2. Whether the District Court erred in holding that the Interstate Commerce Commission has jurisdiction to award reparation for the damages caused petitioner by respondents' use of unfair competitive practices not prohibited or declared to be unlawful or otherwise mentioned in the Interstate Commerce Act. This question is squarely raised by the allegation (R. pp. 31-33) that defendants have utilized available administrative and court procedures, in bad faith or without probable cause, know-

ingly or recklessly misrepresenting facts therein, making misleading statements of fact therein, multiplying and protracting proceedings thereunder, in bad faith or without probable cause, not to obtain settlement of issues, but with the intended effect of continuing and creating doubts and uncertainties, all for the purpose of preventing future diversion of all-rail traffic to petitioner.

Statutes Involved

The Statutes involved are Section 7 of the Sherman Antitrust Act (15 U.S.C. Section 15), Section 16 of the Clayton Act (15 U.S.C. Section 26) and Sections 8 and 16(1) of the Interstate Commerce Act (49 U.S.C. Sections 8 and 16(1)); the following sections of the Interstate Commerce Act are referred to by the District Court (R. pp. 612-614, footnote 4) as bearing upon the Interstate Commerce Commission's jurisdiction: 1(4), 1(10), 1(13), 1(14)(a), 3(4), 7, 15(3) and 305(b), (49 U.S.C. Sec. 1(4), 1(10), 1(13), 1(14)(a), 3(4), 7, 15(3) and 905(b)). The texts of said statutes, and of the declaration as to the National Transportation Policy prefixed to The Transportation Act of 1940, are reproduced in Appendix A hereof.

Statement

This action arises under the antitrust laws of the United States, specifically Sections 1 and 2 of the Sherman Act, and invokes the remedies provided in Section 7 of the Sherman Act and Section 16 of the Clayton Act (R. p. 1).

(A) The Conspiracy Charged, the Relief Sought, and the District Court's Dismissal and Denial.

The complaint seeks damages caused by, and injunctive relief against, an alleged combination and conspiracy by defendant and other railroads, and defendant Association of American Railroads, to monopolize in the hands of railroads the transportation of freight in interstate trade and commerce, and to restrain and limit the competition of Seatrain, a water carrier, with railroads, in such commerce, by restraining and limiting petitioner's development, growth and expansion, and if possible, driving petitioner out of business as a competitor of railroads in such commerce (R. pp. 16-17).

The claim for damages[1] is based solely upon petitioner's loss of earnings resulting from the restraint upon petitioner's growth and expansion as a competitor effected by the combination and conspiracy (R. pp. 35-37, 43).

The amended complaint originally prayed for broad injunctive relief, not only against the combination and conspiracy itself, but against the numerous means alleged to have been concertedly employed in carrying it out (R. pp. 37-42); however, in order to bring certain of the jurisdictional issues into sharp focus, all other prayers for specific injunctive relief were withdrawn at the hearing except those directed against two particular types of means utilized in carrying out the conspiracy, namely, (1) the con-

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[1] Asserted against respondents Pennsylvania, Atlantic Coast Line, Louisville & Nashville, and Southern railroads, herein and in the complaint called the "primary defendants."

certed exclusion of Seatrain from the benefit of the railroads' joint arrangements for the use and interchange of freight cars owned by railroads which do not participate in and maintain through routes with Seatrain, and (2) the concerted use of unfair competitive practices which are not prohibited or declared unlawful or even mentioned in the Interstate Commerce Act (R. pp. 43-45, 624-625).

Petitioner moved for preliminary injunction to restrain the aforesaid exclusion from the benefits of arrangements and agreements as to use and interchange of cars (R. pp. 57-61). Respondents moved to dismiss the complaint on the grounds that exclusive jurisdiction over the subject matter of the action is vested in the Interstate Commerce Commission (R. pp. 46-55, 441-442, 631). Argument on both motions was heard on April 14, 1952 (Relevant District Ct. docket entry under date Apr. 29, 1952).

The District Court held that it lacked jurisdiction to give any of the relief sought, either by injunction or damages, on the ground that the Commission had exclusive jurisdiction with respect thereto (R. pp. 593-622, 624-625); it granted respondents' motion to dismiss the complaint and denied petitioner's motion for preliminary injunction (R. pp. 623, 625-626).

(B) Question No. 1: The Conflict of Decision Between the Commission and the District Court.

Petitioner (herein sometimes called Seatrain) operates as a common carrier by water of commodities generally in interstate commerce between the Port of New York and the Ports of New Orleans, Texas City and Savannah,

under due certifications and authorization by the Interstate Commerce Commission (R. pp. 8, 72).

Seatrain now owns seven "Seatrain-type" vessels, specially designed and constructed for the carriage of freight in railroad cars. The cars are loaded bodily into the Seatrain vessels from adjacent tracks on the docks by special hoisting equipment at the terminals where Seatrain owns and maintains physical equipment for the interchange of freight cars with its rail connections (R. pp. 9, 72-73).[1]

Arrangements and agreements among the railroads of the United States have existed for many years under which railroad-owned freight cars[2] are interchanged and used in interstate commerce by all railroads and water carriers except Seatrain, without restriction (R. pp. 11-14, 76-78, 126). This exclusion of Seatrain as a means used to carry out the alleged conspiracy is charged to be unlawful not merely as a means used in furtherance of the larger conspiracy to monopolize and restrain trade, but as in itself an unlawful monopolization (R. pp. 16-18, 21-29).

One of the devices employed by the railroads to implement this exclusion was their adoption and promulgation, through their Association, in 1932, of Car Service Rule 4, reading (R. pp. 88-90, 139, 383):

> "Cars of railroad ownership must not be delivered to a steamship, ferry or barge line for water

[1] For a further description of the Seatrain operation and the advantages of its services to the public, the Court is respectfully referred to its opinion in *United States* v. *Pennsylvania R. Co.*, 323 U. S. 612, at pp. 613 *et seq.*

[2] Constituting over 98% of all freight cars (affidavit of A. F. Swinburne, R. p. 460).

> transportation, without permission of the owners filed with the Car Service Division."

The subsequent Commission finding that "the sole object of the Association of Railroads' rule was to prevent diversion of traffic from the railroads to Seatrain", is cited in the opinion of this Court in *United States* v. *Pennsylvania R. Co.*, 323 U. S. 612, at page 614.

Promptly after the Rule was promulgated, Seatrain's connecting carriers initiated proceedings before the Interstate Commerce Commission,[3] alleging that the rule, and the railroads' refusal to permit interchange of their cars with Seatrain thereunder, were unlawful under the Interstate Commerce Act. Seatrain intervened. The railroads opposed, claiming among other things that the Commission had no jurisdiction to require interchange of railroad-owned cars with Seatrain (R. pp. 100-101).

The Commission held (*Investigation of Seatrain Lines, Inc.*, 206 I. C. C. 328, 1935):

> "We find nothing in the act imposing any duty upon or giving us jurisdiction to require a rail carrier to permit delivery of its cars to a water carrier where through routes between such rail and water carriers do not exist.
>
> • • •
>
> "There is no duty to interchange cars with Seatrain resting on those defendants who are not parties to through routes with it . . ." (p. 343)

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[3] I. C. C. Docket Nos. 25728 and 25878.

The Commission held, however, that under its power over "through routes," it had jurisdiction to require a railroad which was a party to a through route with a water carrier to interchange its cars with such water carrier in connection with the operation of such through route (pp. 343, 344).

On January 28, 1938 (226 I. C. C. 7) the Commission repeated its earlier finding, saying (p. 30):

> ". . . we may not, in the absence of through routes, require it [a rail carrier] to furnish cars that are to be delivered to a water carrier contrary to the express directions of the owners of the cars."

Those proceedings initiated in 1932 continued (with the injection of additional issues and many complications and delays (R. pp. 104-107)) until, on October 13, 1941, the Commission ordered defendants in said proceedings

> "*according as they participate in through routes* with complainants and Seatrain Lines, Inc., in interstate commerce via Belle Chasse, La., and Hoboken, N. J. . . . to abstain from observing and enforcing their present rules, regulations and practices which prohibit the interchange of their freight cars with complainants herein for transportation by Seatrain Lines, Inc. in interstate commerce." (Ex. 31 to aff., R. pp. 298-299, emphasis supplied).

This order was appealed by certain railroads, and its effectiveness automatically suspended thereby, until this Court upheld it in all respects on January 29, 1945 (*United States* v. *Pennsylvania R. Co.*, 323 U. S. 612).

This order, as it showed on its face, was based upon the Commission's limited authority to require those (and only those) railroads which participate in and maintain through routes with Seatrain to permit their cars to be delivered to Seatrain "according as they participate in [such] through routes."

Thus, from 1932 to 1945, Seatrain sought to obtain the privilege of carrying the very railroad cars which carry freight to its ports, but was unsuccessful in its attempts to obtain such right except as to cars owned by railroads which participated in through routes with Seatrain. The number of cars owned by railroads which participate in through routes with Seatrain is but a fraction of the total number of railroad-owned cars which are available for use by every other carrier in the United States engaged in interstate commerce (R. pp. 126-130 and Ex. 40 to aff., at R. p. 333). Without the privilege of carrying the very railroad cars which carry freight to its ports, Seatrain's type of service cannot be rendered to the public except to a limited extent. As this Court pointed out in *United States* v. *Pennsylvania R. Co., supra* (at pp. 616-617):

> "The interrelationship of the three parts of the [Interstate Commerce] Act was made manifest by its declaration of a 'national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each' . . .
>
> "This policy cannot be carried out as to Seatrain's interstate carriage unless railroads interchange their cars with it. The particular type of

> service introduced by Seatrain, and found by the Commission to be qualitatively superior, cannot be rendered without the privilege of carrying the very railroad cars which carry freight to its ports. The 'inherent advantages of this service' would be lost to the public without railroad car interchange."

On November 13, 1951, the Interstate Commerce Commission granted Seatrain temporary authority to operate a new service between the Ports of New York and Savannah, saying (R. pp. 123-124, Annex C to aff., R. p. 185):

> "We find that there is an immediate and urgent need for applicant's proposed service as a common carrier by self-propelled vessels in the transportation of commodities generally between the Ports of New York and Savannah, and that there is no carrier service capable of meeting such need."

Seatrain inaugurated regular service pursuant to this authority on November 30, 1951 (R. p. 124). The Record shows that it was promptly confronted with a new series of obstructions and obstacles by concerted action of the respondents and other railroads (R. pp. 131-148).

Accepting the limitations on the Commission's jurisdiction established by the foregoing decisions, Seatrain brought this action under the antitrust laws to obtain the right to carry "the very railroad cars which carry freight to its ports," which are not owned by railroads participating in or maintaining through routes with Seatrain,—which right is essential in order for Seatrain to give the public the "inherent advantages" of its service. Respondents thereupon completely reversed their contentions

which they had urged over many years before the Commission and this Court[1] (R. pp. 528-586); see also *United States* v. *Pennsylvania R. Co., supra,* p. 615. And now the District Court has upheld their new contention that the Court has no jurisdiction under the antitrust laws because the Commission has exclusive jurisdiction under the Interstate Commerce Act.

The final decision of the Commission was made,[2] and its order issued thereon, on October 13, 1941—a year after the passage of the Transportation Act of 1940. Since the passage of that Act, there have been no amendments to the Interstate Commerce Act which pertain in any way to the jurisdiction of the Commission herein involved. Therefore, the District Court's holding that the Commission now has exclusive jurisdiction must also be that the Commission has had exclusive jurisdiction at least since the passage of the Transportation Act of 1940.

(C) Question No. 2: The Commission's Power to Grant Reparations.

The complaint alleges numerous means used by the defendants to carry out the conspiracy. Some of the acts so charged as means were subject to the jurisdiction of the Interstate Commerce Commission; others were not (R. pp. 17-35).

The complaint alleges in paragraphs 56, 57 and 58 (R. pp. 31-33) that defendants concertedly utilized available

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[1] Respondents Baltimore and Ohio, Erie and Association, though parties to the I. C. C. proceedings, were not parties to the appeal.

[2] *Hoboken Mfrs. Railroad Company* v. *Abilene and Southern Railway Company,* 248 I. C. C. 109.

administrative and court procedures in bad faith or without probable cause, knowingly and recklessly misrepresenting facts therein, making misleading statements of fact therein, multiplying and protracting proceedings thereunder, in bad faith or without probable cause, not for the purpose of obtaining settlement of issues, but with the intended effect of continuing and creating doubts and uncertainties, all for the purpose and with the effect of preventing future diversion of all-rail traffic to Seatrain in furtherance of the conspiracy.

The District Court held that the damages inflicted by the employment of these means in carrying out the alleged conspiracy were not recoverable under the antitrust laws because:

> ". . . They must follow the major charge as being within the jurisdiction of the Commission.
>
> "Neither can this Court maintain jurisdiction over the suit insofar as it claims treble damages from the primary defendants under the holding herein that the complaint charges acts cognizable under the primary jurisdiction of the Commission which are remediable under its reparation power . . ." (R. p. 618.)

REASONS FOR GRANTING THE WRIT

I.

The conflict in decision between the Interstate Commerce Commission and the District Court should be resolved by this Court.

In October, 1941, the Commission, in the light of the Transportation Act of 1940, reaffirmed its jurisdictional holdings made in 1935 and 1938 (pp. 8-10, *supra*) (*Hoboken Mfrs. Railroad Company* v. *Abilene and Southern Railway Company,* 248 I. C. C. 109, at pp. 109-110), and ordered those railroads (which included all of the primary defendants herein) according as they participate in through routes with petitioner, to permit interchange and use of their cars by petitioner, according as they participated in such through routes.[1]

Upon review of that order, in *United States* v. *Pennsylvania R. Co., supra,* the railroads contended that amendments to the Interstate Commerce Act by the Transportation Acts of 1920 and 1940 had taken away from the Commission *all power* over interchange and use of cars by a water carrier, even where a through route existed. It was with reference to this argument that this Court "interpreted" the National Transportation Policy in language which led the District Court in this case to overrule the Commission's decision, and hold that the Commission

[1] Certain of the secondary defendants, which had been parties to the original proceedings, had previously consented to use of their cars by Seatrain (R. p. 110).

has the power to require all railroads to permit unrestricted use and interchange with petitioner, a water carrier, of cars owned by railroads which do not participate in or maintain through routes with petitioner.

This conflict in decision between the Commission and the District Court, each holding that it has no jurisdiction to grant relief to Seatrain in the matter of the interchange of cars belonging to railroads which do not participate in and maintain through routes with Seatrain, is one which this Court should resolve. The Commission's decision that it has a limited jurisdiction (*i.e.*, as to cars of participants in through routes) has already been subjected to Court review and has, indeed been upheld by this Court, in *United States* v. *Pennsylvania R. Co., supra.*

In order to comply with the District Court's suggestion in this case that it again resort to the Commission, petitioner has applied to the Commission for a declaratory order under Section 5 (d) of the Administrative Procedure Act, defining the extent and basis of the Commission's jurisdiction in the premises.[2] Petitioner hopes in this way to gain the benefit of a current expression by the Commission of its views as to the two questions here presented to the Court. But petitioner also recognizes that no decision by the Commission on these questions can finally settle these issues,—that only a decision by this Court can have that effect. Whatever declaratory order the Commission might make would not be binding on anyone who

[2] A copy of this application as filed with the Commission is annexed hereto as Appendix B.

might choose to challenge it or challenge any action of the Commission taken in pursuance thereof.

In view, moreover, of the fact that the District Court's opinion fails to indicate any section or sections of the Interstate Commerce Act as conferring jurisdiction upon the Commission, but instead relies upon the "spirit" of the National Transportation Policy, which Policy does not in itself grant any power to the Commission or impose any duties upon the railroads, petitioner sees little reason to expect that the Commission will depart from its former final holding, unless this Court itself, in resolving the conflict, directs it to do so.

In the meantime, the two conflicting decisions by the Commission and the District Court stand in the way of petitioner's obtaining, in either forum, the relief which it needs to enable it fully to make available to the public the special advantages inherent in its service (See *United States* v. *Pennsylvania R. Co., supra,* at p. 617).

To prevent such conflict and uncertainty, this Court has been given direct appellate jurisdiction to review cases under the Interstate Commerce Act, without their passing through the Courts of Appeal. (Jud. Code Secs. 1253, 1291). The same considerations apply, *mutatis mutandis,* to the decision of these questions as to the interpretation of the Interstate Commerce Act, in this antitrust case. And since the conflict, and resulting uncertainty, as to the application of the Interstate Commerce Act to petitioner's use and interchange of railroad-owned freight cars, were engendered by the District Court's interpretation of this Court's opinion in *United States* v. *Pennsylvania R. Co.,*

supra, only this Court can, in the final analysis, resolve that conflict or remove that uncertainty.

Finally, the District Court's decision creates, but gives no help in resolving, the question as to the statutory basis in the Interstate Commerce Act of the power which it concluded that the Commission "must have." In the prior proceedings before it, the Commission was unable to find any provision of the Act conferring upon it such power.

This Court's opinion in *United States* v. *Pennsylvania R. Co., supra,* being confined to through routes, throws no light on this question. If it is the Commission rather than the Court which has the power to give petitioner the relief it is seeking, petitioner and the Commission alike are urgently in need of guidance as to the particular provisions of the Act under which that relief should be sought and granted.

This conflict in decision between the Commission and the Courts also raises squarely the important question whether the District Court was free to disregard the Commission's earlier decision, in proceedings between the same parties, as to the Commission's own lack of power.

The doctrine of primary jurisdiction requires initial resort to the administrative agency, to obtain relief which it has jurisdiction to give, in order to preserve that unity in the system of regulation which the Interstate Commerce Act was designed to achieve. *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.,* 204 U. S. 426 (1907). When the Commission asserts jurisdiction, and either grants or denies relief, its decision is not subject to collateral attack,

but can only be reviewed directly by the special procedures provided in the Judicial Code.

Interstate Commerce Act, Section 17 (9);
Venner v. *Michigan Central R. R. Co.,* 271 U. S. 127 (1926);
Terminal Warehouse Co. v. *Pennsylvania R. Co.,* 297 U. S. 500 (1936).

This case presents the reverse question, which is of equal importance in the administration both of the Interstate Commerce Act and of the antitrust laws, whether a decision of the Commission denying its own jurisdiction is subject to collateral attack. It likewise presents the cognate question as to the effect of a decision by the Interstate Commerce Commission, and a Court decision upholding the same, as *res judicata,* in a subsequent action between the same parties under the antitrust laws. (cf. *Terminal Warehouse Co.* v. *Pennsylvania R. Co., supra.*)

II.

This case presents an important question as to the Commission's jurisdiction to award reparation under the Interstate Commerce Act which has not been but should be passed upon by this Court.

The complaint alleges a conspiracy among the defendants and other railroads to monopolize interstate trade and commerce in the transportation of freight and to restrain the competition, and limit and prevent the growth and development of petitioner Seatrain, a water carrier, as

a competitor with railroads in such commerce, and if possible to drive it out of business (R. pp. 16-17).

Among the means alleged to have been used by defendants to carry out the conspiracy were those subsumed by the District Court under the term "unfair competitive practices."

The complaint charges, as such means, the concerted utilization of available administrative and court procedures, in bad faith or without probable cause, knowingly and recklessly misrepresenting facts therein, making misleading statements of fact therein, multiplying and protracting proceedings thereunder, in bad faith or without probable cause, not for the purpose of obtaining settlement of issues, but with the intended effect of continuing and creating doubts and uncertainties, all for the purpose and with the effect of preventing future diversion of all-rail traffic to Seatrain in furtherance of the conspiracy (R. pp. 31-33).

No provision of the Interstate Commerce Act prohibits or declares unlawful the use of such practices in proceedings before the Commission, to say nothing of proceedings before the courts.

The District Court held, however, with respect to petitioner's charges as to such practices (R. p. 618):

> "The subsidiary charges made by Seatrain as to unfair competitive practices upon the part of the defendants are incidental to the main allegations of the complaint that the defendants have conspired to deny to Seatrain interchange and use of freight cars owned by railroads. They must follow the major charge as being within the jurisdiction of the Commission.

> Neither can this court maintain jurisdiction over the suit in so far as it claims treble damages from the primary defendants under the holding herein that the complaint charges acts cognizable under the primary jurisdiction of the Commission which are remediable under its reparation power."

As alleged in the complaint, these charges as to "unfair competitive practices" are not "subsidiary" to, but coordinate with, the charges involving exclusion from car interchange; the "major charge", to which both are alike "subsidiary", is the charge that defendants have conspired to limit petitioner's growth and development and if possible to drive it out of business as a competitor of railroads in interstate commerce, by use of these means, among others.

Petitioner recognizes, of course, that it is not entitled to recover under the antitrust laws injuries remediable under the reparations power of the Commission. It does not seek any such damages in this case. It does seek, however, recovery of such damages as it can prove it has sustained that are not remediable under the reparations power of the Commission—a recovery which this Court, in *Terminal Warehouse Co.* v. *Pennsylvania R. Co., supra,* indicated it was entitled to have.

The District Court avoided this question by holding that all of petitioner's damages would be recoverable as reparations before the Commission (R. p. 618). This Court has already indicated, however, in *Terminal Warehouse Co.* v. *Pennsylvania R. Co., supra,* that the underlying conspiracy pursuant to which the acts were done, is not enough to

bring within the Commission's jurisdiction (under Section 16, par. 1) to award damages for a violation of the Act, the damages caused by acts which are not prohibited or declared to be unlawful (see Section 8), or indeed even mentioned by any section of the Act.

III.

The Public Interest would be served by a Prompt Review.

This Court has cited with approval the finding of the Interstate Commerce Commission that Seatrain's "interstate operations were in the public interest and of advantage to the convenience and commerce of the public."[1]

By reason of the matters alleged and shown in this case, the respondents have injured and are now injuring not only Seatrain, but to a far greater extent the public, by depriving numerous industries and communities of the efficient and economical transportation which Seatrain could otherwise provide. The injury thus inflicted on the public by the unlawful combination and conspiracy exceeds in amount even the very substantial injury inflicted upon Seatrain as a servant of the public.

More than a year ago the Commission granted Seatrain authority to inaugurate its New York-Savannah service, saying (R. pp. 123-124, Annex C to aff., R. p. 185):

> "We find that there is an immediate and urgent need for applicant's proposed service . . . and that

[1] *United States* v. *Pennsylvania R. Co.*, 323 U. S. 612, at p. 614.